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PATENT & TRADEMARK OFFICE

Atty. Dkt. No.:WG0052H

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants:	Lemons et al.
Title:	FOUR PIECE GOLF BALL
Appl. No.:	10/682,321
Filing Date:	October 9, 2003
Examiner:	Alvin A. Hunter
Art Unit:	3711

CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail under 37 C.F.R. § 1.8 on the date indicated below and is addressed to: Mail Stop: Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

28 November 2007
(Date of Deposit)

Terence P. O'Brien
(Printed Name)

(Signature)

APPELLANTS' AMENDED REPLY BRIEF UNDER 37 CFR 41.41 IN RESPONSE TO OFFICE COMMUNICATION MAILED ON NOVEMBER 6, 2007

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants herewith file an Amended Reply Brief in the above-identified case, in response to the Examiner's Answer mailed June 25, 2007 and the Office Communication dated November 6, 2007. Appellants respectfully submit that the Examiner's assertions are incorrect as a matter of law and fact. Thus, for the reasons set forth below, Appellants respectfully request that this Board reverse the rejection of claims 1-10, 13-19, 36, and 37 under 35 U.S.C. §112, first paragraph, and 35 U.S.C. §103(a).

In the Examiner's Answer, the Examiner reiterates the rejections of claims 1-10, 13-19, 36, and 37 under 35 U.S.C. §112, first paragraph, and 35 U.S.C. §103(a) presented in the Office Action mailed July 19, 2006, and then presents a response to Appellants' arguments presented in the Appeal Brief.

Appellants maintain that the conventional terpolymers described in the specification are non-bimodal blend terpolymers. Appellants further maintain that the *Sullivan et al.*, *Farally et al.*, *Chen*, and *Melvin et al.* references, in any combination, fail to disclose or suggest Appellants' claimed invention.

1. CLAIMS 1-10, 13-19, 36, AND 37 ARE IN COMPLIANCE WITH THE WRITTEN DESCRIPTION REQUIREMENT OF 35 U.S.C. 112, FIRST PARAGRAPH.

The *Chen* reference, cited against claims 1-10, 13-19, 36, and 37 under 35 U.S.C. 103(a), explains that a "bi-modal blend" is a melt-blend of ethylene α,β ethylenically unsaturated C_{3-8} carboxylic acid copolymers having weight average molecular weights (Mw) of about 80,000 to about 500,000 (high copolymers) with ethylene α,β ethylenically unsaturated C_{3-8} carboxylic acid low polymers having Mw of about 2,000 to about 30,000 (low copolymers).

The "non-bimodal blend" terpolymers recited in Appellants' claims 1 and 14 include ethylene, carboxylic acid (preferably acrylic acid), and an acrylate salt (preferably n-butyl acrylate), wherein 100% of the carboxylic acid is neutralized with metal ions. Appellants' specification makes no mention of "bi-modal blends," but instead refers only to ***conventional (i.e., "non-bimodal blend")*** terpolymers that include carboxylic acid. As recognized by one of ordinary skill in the art, in view of the *Chen* reference, conventional terpolymers that include carboxylic acid ***are*** non-bimodal blends. Thus, Appellants respectfully submit that the subject matter of claims 1-10, 13-19, 36, and 37 was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

In the Appeal Brief, Appellants indicated that they would be willing to submit a declaration under 37 CFR 1.132 stating that the conventional terpolymers described in the specification are non-bimodal blends. In the Examiner's Answer, the Examiner indicated that Appellants should submit such a declaration at this time. A declaration under 37 CFR 1.132, signed by one of the co-inventors of the present Application, Frank M. Simonutti, is attached to this Reply Brief.

In the Office Communication mailed on November 6, 2007, the Examiner states that the Reply Brief filed on August 20, 2007 has not been considered because it is not in compliance with 37 CFR 41.41(a). The Office Communication further states that a showing as to why the affidavit could not be submitted before the filing of the appeal is required.

In the Appeal Brief filed by Appellants on April 4, 2007, Appellants stated that it is recognized by one of ordinary skill in the art that conventional terpolymers that include carboxylic acid are non-bimodal blends. Specifically, the *Chen* reference, U.S. Patent No. 6,562,906, supports this statement that one of ordinary skill in the art would recognize that conventional terpolymers that include carboxylic acid are non-bimodal blends. In an effort to avoid filing documents that would be essentially duplicative or redundant, Appellants did not submit a declaration under 37 CFR 1.132 with the Appeal, **but** offered to so if desired by the Board. In the Examiner's Answer, the Examiner states

> "Appellants state that it is willing to submit a declaration under 37 CFR 1.132 to show the disclosed composition being non bimodal. Being that the case is up for review for the Board of Appeals and Interferences, a declaration should be submitted to show such." Pages 10 and 11 of Examiner's Answer mailed on August 17, 2007.

Accordingly, with the original Reply Brief filed on August 20, 2007 and with the present Amended Reply Brief, Appellants include a declaration under 37 CFR 1.132 of Frank M. Simonutti, one of the co-inventors of the present Application.

In view of the attached declaration under 37 CFR 1.132 and the *Chen* reference, Appellants maintain that the conventional terpolymers described in the specification are non-bimodal blend terpolymers; thus, the subject matter of claims 1-10, 13-19, 36, and 37 was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

2. NONE OF THE CITED REFERENCES, IN ANY COMBINATION, DISCLOSE OR SUGGEST APPELLANTS' CLAIMED INVENTION.

The *Chen* reference is specifically directed to ***bi-modal ionomers*** wherein a low copolymer with a molecular weight ("Mw") of about 2000 to about 30,000 is blended with a high copolymer having a Mw of about 80,000 to 500,000. The *Chen* reference itself distinguishes the difference between bi-modal and non bi-modal ionomers, and further emphasizes the criticality of using bi-modal versus non bi-modal ionomers. *Chen* is devoid of any reference to neutralization of ***non-bimodal ionomers***, as required by Appellants' independent claims 1 and 14.

Further, although *Chen* includes statements that the acid moieties in the resulting bi-modal ionomer of the high and low copolymers are partially or fully neutralized to a level of about 40% to *about 100%*, ***Chen* does not teach, suggest or disclose neutralizing a *non-bimodal* ionomer to 100%**. Further, *Chen*'s statements regarding bimodal blend ionomers being neutralized to "about 100%" do not teach or disclose ***complete 100% neutralization***. Rather, Appellants respectfully submit that *Chen* merely states the common practice of golf ball design at the time of filing of *Chen* to ***approach*** 100% neutralization, but not actually reach 100% neutralization. At the time of *Chen*'s filing, complete 100% neutralization was not performed because such ionomers would not flow and were unworkable. *Chen* provides no teaching or disclosure that would indicate that the phrase "about 100%" would mean anything other than an amount close to, but not reaching, 100% neutralized to one of ordinary skill in the art. Accordingly, *Chen* fails to teach, suggest or disclose a golf ball including a core, a mantle and inner and outer cover layers, wherein the mantle includes a terpolymer of ethylene and acrylic acid, wherein 100% of the acid groups are neutralized with metal ions.

Rather, the disclosure and teaching of *Chen* ***teaches away*** from complete 100% neutralization. *Chen* repeatedly states that preferred ranges of neutralization include about 50 to about 85% neutralization, about 50 to about 90% neutralization, or about 60 to about 80% neutralization. Further, *Chen* provides 33 examples of his invention, wherein 33 different golf ball compositions are disclosed. None of the 33 examples included co- or terpolymers that were 100% neutralized with metal ions. Rather than use complete 100% neutralization, the 33 different golf ball composition examples of *Chen* include copolymer neutralization within the range of 37% to 75%, which is consistent with the existing art at the time of *Chen*'s filing. *Chen* is wholly devoid of any disclosure indicating that the term "about 100% neutralization" is to be interpreted as complete 100% neutralization. Rather, *Chen*'s disclosure is consistent with the state of the art of golf ball design at the time of the *Chen* filing, wherein golf balls were not produced with co- or terpolymers that were 100% neutralized because the result was unworkable.

3. CONCLUSION

Appellants maintain that the subject matter of claims 1-10, 13-19, 36, and 37 was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Appellants further maintain that the *Chen* reference fails to overcome the deficiencies of the *Sullivan et al.*, *Farally et al.*, and *Melvin et al.* references.

For at least the reasons presented in the Appeal Brief, the attached declaration under 37 CFR 1.132, and the reasons presented above, Appellants respectfully submit that the Examiner's Answer does not overcome Appellants' Appeal Brief. Therefore, Appellants respectfully request that the Board reverse the rejections proposed by the Patent Office.

Respectfully submitted,

Date 28 November 2007

By

Terence P. O'Brien
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Appellants: Lemons et al.

Title: FOUR PIECE GOLF BALL

Appl. No.: 10/682,321

Filing Date: October 9, 2003

Examiner: Alvin A. Hunter

Art Unit: 3711

DECLARATION OF FRANK M. SIMONUTTI UNDER 37 CFR 1.132

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

I, Frank M. Simonutti, declare as follows:

1. I am employed by Wilson Sporting Goods Co., and am one of the inventors named on the above-identified patent application, which is assigned to Wilson Sporting Goods Co.

2. I am polymer chemist and, over the past seventeen (17) years, I have designed numerous golf balls and golf ball compositions.

3. The above-identified patent application describes conventional terpolymers that include carboxylic acid.

4. As recognized by one of ordinary skill in the art, in view of the *Chen* reference (U.S. Patent No. 6,562,906), conventional terpolymers that include carboxylic acid are non-bimodal blends.

5. I hereby declare that all statements made herein based on my own knowledge are true, and that all statements made on information and belief are believed to be true. These statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date August 16, 2007

By Frank M. Simonutti

Frank M. Simonutti

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